

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
IN ADMIRALTY

Carl Schröter GmbH & Co. KG,	)	
	)	Civil Action No.: 2:20-cv-334-RMG
Plaintiff,	)	
	)	
vs.	)	
	)	
Smooth Navigation S.A.,	)	
	)	
Defendant.	)	

**AMENDED JOINT MOTION AND STIPULATION FOR DISBURSEMENT OF FUNDS  
CURRENTLY HELD IN THE REGISTRY OF THE COURT**

COMES NOW, Plaintiff Carl Schröter GmbH & Co. KG (“**Plaintiff**”), Defendant Smooth Navigation S.A. (“**Smooth**”), Intervening Plaintiff Praxis Energy Agents LLC (“**Praxis**”), Intervening Plaintiff Stoney Marine International Limited, d/b/a Coleman Supply (“**Stoney**”), and Intervening Plaintiff The London Steamship Owners Mutual Insurance Association (“**The Club**”) and file this Joint Motion and Stipulation for Disbursement of Funds Currently Held in the Registry of the Court.

**FACTUAL AND PROCEDURAL BACKGROUND**

The M/V EVOLUTION (IMO No. 9122899) was sold on May 19, 2020 and the sale proceeds of \$1,340,000 were paid into the registry of the Court. Following various motions and stipulations filed with the Court, funds have been disbursed for broker’s fees, advertising expenses, crew wages, *custodia legis* expenses, etc., leaving \$382,248.68 in the Registry of the Court. The parties have negotiated and reached agreement on the disbursement of the remainder of the funds as follows:

## **I. U.S. Marshal Service Commission.**

The United States Marshal Service is entitled to receive a commission for the auction of the M/V EVOLUTION pursuant to 28 U.S.C. § 1921. The statute provides in relevant part:

(c)(1) The United States Marshals Service shall collect a commission of 3 percent of the first \$ 1,000 collected and 1 1/2 percent on the excess of any sum over \$ 1,000, for seizing or levying on property (including seizures in admiralty), disposing of such property by sale, setoff, or otherwise, and receiving and paying over money, except that the amount of commission shall be within the range set by the Attorney General.

*Id.* The federal regulations supplementing § 1921 explain that the “U.S. Marshal's commission shall apply to all judicially ordered sales and/or execution sales . . .” 28 C.F.R. § 0.114(h); *see also Caterpillar Fin. Servs. Corp. v. Mr. C II*, 03-cv-228, 2003 U.S. Dist. LEXIS 15267, \*4 (E.D.La. Aug. 19, 2003).

At the time that the Joint Motion and Stipulation to Disburse Funds was filed with the Court on May 17, 2022 (ECF 167), it was believed by all parties that the U.S. Marshal Service had already deducted their statutory commission. In response to the Court’s Order of May 19, 2022 (ECF 168), counsel for Intervening Plaintiff Praxis has conferred with the U.S. Marshal Service’s main district office in Columbia, South Carolina and has been informed that the commission has not yet been deducted from the Court Registry. Accordingly, the U.S. Marshal Service is entitled to receive the funds totaling \$20,115.00 as commission under 28 U.S.C. § 1921.<sup>1</sup>

## **II. Remaining Custodia Legis Expenses.**

1. Smooth to be paid \$8,940.00 for fuel/lubricants consumed by the Vessel during the arrest and attachment of the Vessel.

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<sup>1</sup> The total of \$20,115.00 is broken down as follows: 3% of \$1000 is \$30.00 and 1.5% of \$1,339,000 is \$20,085. The payment of the commission resolves the discrepancy between the calculation of the amount in the Court Registry according to the docket and the Parties’ stipulation for distribution of the remaining funds, which remain unchanged. *See* Points II and III, *infra*.

2. Praxis to be paid \$41,698.54 for fuel/bunkers supplied to and consumed by the Vessel during the arrest and attachment of the Vessel.

3. Stoney to be paid \$659.00 for victuals supplied to and consumed by the Vessel during the arrest and attachment of the Vessel.

### **III. Resolution of Pending Lien Claims.**

1. Once the priority *custodia legis* expenses are paid, \$310,836.14 will remain in the Registry of the Court. The remaining lien claims by the Intervening Plaintiffs Praxis, Stoney, and The Club total \$353,499. The lien claims outrank the *in personam* claim of the Plaintiff. *Cent. Boat Rentals, Inc. v. M/V Nor Goliath*, 2022 U.S. App. LEXIS 9814, \*7, \_\_ F.4th \_\_, 2022 WL 1090798 (5th Cir. April 22, 2022) (“the primacy of the lien is essential to its role of securing necessities for vessels...”)(citing the Commercial Instruments and Maritime Lien Act, 46 U.S.C. § 31342).

2. Intervening Plaintiffs have agreed to and Plaintiff and Smooth have consented to the *pro rata* split of the remaining funds in the registry to resolve the lien claims pending before the Court.

3. Accordingly, the Parties agree and stipulate that the remaining funds are to be disbursed from the Court Registry as follows:

- a. Stoney - \$46,571.75
- b. The Club - \$25,742.56
- c. Praxis - \$238,521.83

4. Following the disbursement of the funds, the *res* will be exhausted and all orders of attachment and arrest may be vacated by the Court. An agreed order is enclosed hereto.

5. Once the funds are disbursed, the Parties will submit a Stipulation of Voluntary Dismissal, which will dismiss the Intervening Complaints of Praxis (ECF 46), Stoney (ECF 80), and The Club (ECF 96) with prejudice and without costs.

6. Plaintiff's Amended Complaint (ECF 39) will be dismissed without prejudice and without costs. Plaintiff reserves the right to continue to prosecute its claims in the London Arbitration proceedings against Smooth Navigation S.A. All of Smooth's rights and defenses in said arbitration are also reserved.

WHEREFORE, the Parties respectfully request that the Court enter the enclosed Order disbursing the remaining funds in the registry of the Court to the United States Marshal Service and counsel of record for Smooth, Stoney, The Club, and Praxis.

**WE STIPULATE AND CONSENT:**

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